

### **REMARKS**

This is in response to the Office Action mailed June 22, 2006.

Claims 1-12, 14, 15 and 20, 22-27 have been amended. Support for the amendments to the claims can be found throughout the originally filed application, e.g., paragraphs 41, 43, 44 and 47, and Table 4. No new matter is introduced. Applicants submit this amendment to place the claims in condition for allowance or better condition for Appeal, pursuant to C.F.R. 1.116. Accordingly entry of this amendment is respectfully requested.

Independent claim 1 and its dependent claims 2-12, 14-15, 20, 22-23, and 26-27, and independent claim 24 and its dependent claim 25, are currently pending and at issue. Claims 13, 16-19, 21 and 28 have been withdrawn as being based on non-elected species.

#### **Amendments to the Specification**

The Abstract has been amended as suggested by the Examiner to be directed to an article of manufacture, e.g., a package.

#### **Claim Rejections - 35 U.S.C. §102**

The Examiner has rejected claims 1-12, 14, 15 and 20-27 under U.S.C. § 102(b) as being anticipated by Park (U.S. Patent No. 4,784,871). The Examiner asserts that Park teaches a calcium fortified yogurt and that the claimed printed matter is not a patentable limitation, citing *In re Ngai*, 217 USPQ 401, 404 (Fed. Cir. 2004).

The Examiner acknowledges that printed matter functionally related to a composition can distinguish the composition over the prior art, if there is a functional relation present. The Examiner

further states that the critical question is whether there exists any new and unobvious functional relationship between the new matter and the substrate.

Applicants contend that the present invention is distinct from Park and Skinner, because these references, either alone or in combination, do not disclose, teach or suggest the claimed invention as set forth in amended claims 1 or 24, their dependent claims 2-12, 14-15, 20, 22-23, and 26-27, and dependent claim 25, respectively, which include additional limitations distinguishing them from the cited references.

### **Conclusion**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner issue a Notice of Allowance indicating the allowability of claims 1-12, 14, 15 and 20, 22-27 and that the application be passed to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Application No. 10/827,353  
Amendment dated October 18, 2006  
After Final Office Action of June 22, 2006

Docket No.: 31894-199297

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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